

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

FEDEX FREIGHT, INC.

Employer

and

Case 13-RC-147997¹

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 710²

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

If a petitioner seeks to represent a unit of employees that is readily identifiable as a group and shares a community of interest, the unit will be found appropriate unless a party seeking a broader unit demonstrates that the employees it seeks to add share an overwhelming community of interest with the employees in the petitioned-for unit. The Petitioner, Teamsters Local 710, filed a petition that, as amended, seeks to represent a unit of City Drivers and Road Drivers employed by the Employer at its Chicago Heights Terminal located in Chicago Heights, Illinois. The Employer contends that this unit is inappropriate because it excludes the Employer's Dockworkers.

A Hearing Officer of the Board heard this case on a fully stipulated record consisting of a Joint Stipulation of Facts and various exhibits. The parties' Joint Stipulation of Facts adopts significant portions of the record in the hearing in Case 04-RC-133959 involving a petition filed by Teamsters Local 107 to represent a similar unit at another of the Employer's facilities. The parties stipulated their request that the briefs filed in Case 04-RC-133959 should be considered as if filed in this case, and the parties submitted additional briefs in this case. I have considered the evidence and the arguments presented by the parties, and because the City Drivers and Road Drivers constitute a readily identifiable group and share a community of interest, I have concluded that the petitioned-for unit is appropriate and that the Employer has failed to meet its burden to show that they share an overwhelming community of interest with the Dockworkers.

¹ By Order dated March 26, 2015, the General Counsel transferred this case to Region 4 for decision. The Order also directed that the case would return to Region 13 for further processing upon the issuance of a Decision and Direction of Election.

² The names of the Employer and Petitioner appear as corrected by the Joint Stipulation of Facts.

In this Decision, I will first provide an overview of the Employer's operations. Then, I will set forth the legal standards to be applied in resolving the community-of-interest issues presented in this case, and I will set forth the facts and reasoning which support my conclusions.

I. OVERVIEW OF OPERATIONS

The Employer provides interstate freight pick-up and delivery services for customers at numerous terminals, including its Chicago Heights Terminal (the Terminal) in Chicago Heights, Illinois. The Employer picks up and delivers freight directly from and to customers, and between FedEx terminals. The Terminal is a "rail-hub/dual hub" operation. It is a rail-hub because freight is taken to and from rail yards to the Terminal. It is dual hub operation because drivers from other terminals drop off and pick up freight at the Terminal for both economy and priority freight.

The Terminal consists of two buildings surrounded by a yard. The main building contains administrative offices and a dock with 262 operational doors, two ramp doors, and one door with a trash compactor. The second building contains a maintenance shop with eight bays, where maintenance is performed on tractors and equipment. The yard surrounding the buildings is used for storing the Employer's tractors, trailers, and other equipment.

Service Center Managers Richard Whalen and Jason Young manage the day-to-day operations of the Terminal and are the highest ranking management officials there. Two Assistant Service Managers report directly to Whalen and Young as do 10 Operation Managers. Fifty Operational Supervisors directly supervise the Employer's employees.

The Employer's 605 City Drivers, Road Drivers, and Dockworkers are based at the Terminal. There are 93 City Drivers,³ 139 Road Drivers, and 373 Dockworkers. One-hundred-and-forty-six of the 373 Dockworkers are full-time employees, and six of them are enrolled in the Employer's "dock-to-driver" program and are also known as Driver Apprentices. The remaining Dockworkers work on a part-time basis and are known as Supplemental Dockworkers. There are 21 Shop Technicians, one Parts Coordinator, two maintenance employees, and 14 custodial employees employed at the Terminal; the parties agree that these employees are properly excluded from any unit. Office clerical employees also work at the Terminal, and no party took the position they should be included in the unit.

The Employer uses a payroll and time-keeping system known as Kronos. Kronos tracks employees' hours and wages according to the work they perform, using five categories: (1) "city hours," which calculates the hours an employee spends performing City Driver work; (2) "road miles," which calculates the number of miles driven by an employee performing Road Driver work;⁴ (3) "drayage hours," which calculates the hours an employee spends picking up and delivering freight from and to rail yards; (4) "dock hours," which calculates the hours an

³ One of the City Drivers is a part-time employee. The remaining City Drivers are full-time employees.

⁴ Kronos also estimates the number of work hours based on the road miles an employee drives.

employee spends working on the dock; and (5) “hostling hours,” which calculates the hours an employee spends moving trailers around the yard and to and from docks.

II. THE RELEVANT LEGAL STANDARDS

The Act does not require that the unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, it requires only that the unit be *an* appropriate one. *International Bedding Co.*, 356 NLRB No. 168 (2011); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting*, 290 NLRB 150 (1988). Procedurally, the Board examines the petitioned-for unit first. If that unit is appropriate, the inquiry ends. *Wheeling Island Gaming*, 355 NLRB 637 (2010); *Bartlett Collins Co.*, 334 NLRB 484 (2001). It is only where the petitioned-for unit is not appropriate that the Board will consider alternative units, which may or may not be units suggested by the parties. *Bartlett Collins Co.*, *supra*; *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). In *International Bedding*, *supra*, slip op. at 2, the Board emphasized that the petitioner’s position regarding the scope of the unit is a relevant consideration, citing *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7th Cir. 1969), *cert. denied* 396 U.S. 832 (1969).

In determining whether a proposed unit is appropriate, the focus is on whether employees share a community of interest. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985). To make this determination, the Board examines such factors as employee skills and job functions; common supervision; contact and interchange; similarities in wages, hours and other terms and conditions of employment; functional integration; and bargaining history, if any. *Publix Super Markets*, 343 NLRB 1023 (2004); *United Operations, Inc.*, 338 NLRB 123 (2002); *Bartlett Collins Co.*, *supra*; *Home Depot USA*, 331 NLRB 1289 (2000).

In *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 10-13 (2011), *enfd.* sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), the Board clarified the framework to be applied in making unit determinations where a party seeks a unit that is broader than the petitioned-for unit. The Board first looks at whether the petitioner seeks a unit consisting of employees “who are readily identifiable as a group,” based on job classifications, departments, functions, work locations, skills, or similar factors, and whether those employees share a community of interest. In *Macy’s, Inc.*, 361 NLRB No. 4, slip op. at 8 (2014) and *Bergdorf Goodman*, 361 NLRB No. 11, slip op. at 2 (2014), the Board made it clear that whether the employees are “readily identifiable as a group” and whether they share a community of interest are two separate inquiries. If both standards are met, the party seeking a broader unit must demonstrate “that employees in the larger unit share an *overwhelming* community of interest with those in the petitioned-for unit.” [Emphasis added]. Additional employees share an overwhelming community of interest with petitioned-for employees only if there is no legitimate basis upon which to exclude them from the unit because the traditional community-of-interest factors overlap almost completely. See *Fraser Engineering Co.*, 359 NLRB No. 80, slip op. at 1 (2013); *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163,

slip op. at 3 (2011), enf. denied on other grounds sub nom. *NLRB v. Enterprise Leasing Co. Southeast*, 722 F. 3d 609 (4th Cir. 2013). On the other hand, the Board will not approve a petitioned-for fractured unit that seeks “an arbitrary segment” of what would be an appropriate unit. *Bergdorf Goodman*, supra, slip op. at 4 (2014); *Odwalla, Inc.*, 357 NLRB No. 132, slip op. at 5 (2011); *Specialty Healthcare*, supra, slip op. at 13; *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999).

III. FACTS

A. Job Functions and Terms and Conditions of Employment

City Drivers

City Drivers pick up and deliver freight locally directly to and from customers and to FedEx facilities. City Drivers drive tractor-trailers and spend the bulk of their day away from the Terminal, making many stops throughout the day. City Drivers may also be required to perform work away from their domicile, at other FedEx Freight facilities.⁵ The City Drivers’ job description states that they are expected to communicate directly with customers about deliveries and to solicit additional business. These duties accounted for approximately 22% of City Drivers’ work in the six-month period between September 1, 2014 and February 28, 2014 (the six-month period).⁶ City Drivers also pick up and deliver freight directly from and to rail yards. Such drayage work accounted for 42% of City Drivers’ work during the six-month period.

City Drivers sometimes perform the work of Road Drivers. In total, 77% of the City Drivers accumulated road hours during the six-month period. City Drivers as a group spent 16% of their time performing road work during this period.

City Drivers occasionally perform dock work, usually in order to supplement their hours if their driving hours are short in a given week. In the six-month period, just 10 of the 93 City Drivers performed at least some dock work. No City Driver accumulated more than 90 hours of dock work during the six-month period. As a group, City Drivers spent just 0.3% of their time performing dock work. Though the Employer can mandate dock work, it generally accommodates City Drivers’ preferences to work the dock or elect not to do so.

Some City Drivers were primarily assigned to do hostling work, moving trailers and other equipment in the yard, known as “hostling,” during the six-month period. There are hostling bids for City Drivers. 57% of the City Drivers performed hostling work. However, such work was not even distributed, 23 City Drivers accounted for 91% of all the hostling work. Overall, hostling work accounted for 19% of all the work performed by City Drivers as a group.

⁵ This Decision does not distinguish between work performed at the Chicago Heights Terminal and work performed away from the Chicago Heights Terminal.

⁶ The parties stipulated that the data in the six-month period is representative of the usual allocation of work in the three classifications.

City Drivers are all required to possess Class A Commercial Driver's Licenses (CDLs) with double/triple, hazardous materials, and tank endorsements, and they incur out-of-pocket expenses in order to maintain their CDLs. They are also required to keep DOT logs and other paperwork mandated by the Department of Transportation, and to take meal breaks required under Illinois law. They must have acceptable Motor Vehicle Reports (MVRs) and are subject to random drug testing. City Drivers are also subject to certain disciplinary practices that only apply to the Employer's drivers, although there are additional disciplinary policies for matters such as attendance, safety, and misconduct that apply to all employees. The Employer issues City Drivers security keys for opening tractors in the yard. When hiring City Drivers, the Employer seeks drivers with a minimum of one year of experience, but the Employer also promotes Dockworkers into the City Driver position if they complete the dock-to-driver program discussed below.

Ninety-two of the 93 City Drivers are employed on a full-time basis and work at least 40 hours a week. During the six-month period, individual City Drivers worked, on average, a total of 1,199 hours. City Drivers' hourly wages range between \$22.73 and \$25.73 per hour. City Drivers generally earn more than \$50,000 per year. Wages are determined by seniority. It takes City Drivers three years to reach the top rate. There is no evidence regarding the shifts worked by City Drivers.

The Employer maintains a separate seniority list for City Drivers. Based on their seniority, City Drivers bid on different start times and hostling bids.

Road Drivers

Road Drivers transport freight between the Terminal and other FedEx facilities. They drive tractor-trailers and the vast majority of them spend the bulk of their time away from the Terminal. These driving duties comprised approximately 91% of all the work performed by Road Drivers in the six-month period.⁷

As a group, Road Drivers rarely performed City Driver work during the six-month period. Only two Road Drivers tallied any city hours. Overall, city hours comprised 0.07% of all the work performed by Road Drivers. Similarly, Road Drivers rarely perform drayage work. Although 43% of Road Drivers performed at least some drayage work, six Road Drivers accounted for 59% of all the drayage work during the six-month period. As a group, Road Drivers spent 2% of their time performing drayage work.

Road Drivers who perform dock work normally do so before departing the Terminal to go on a run or after they return from a run. They may also be required to work the dock at the FedEx facility to which they travel. Seventy-five of the 86 the Road Drivers spent time performing dock work during the six-month period, however dock work is not evenly distributed among the Road Drivers. Seventeen Road Drivers accounted for 64% of all the hours Road Drivers spent performing dock work. Dock working duties comprised just 4% of the work

⁷ The record shows work hours for 136 of the 139 Road Drivers during the representational six-month period.

performed by Road Drivers as a group in the six-month period.⁸ Much like their City Driver counterparts, Road Drivers are rarely required to work the dock, but do so voluntarily in order to supplement their hours. Whenever possible, the Employer accommodates a driver's desire to perform, or not perform, dock work.

As a group, Road Drivers rarely performed hostling work during the six-month period. Only one Road Driver tallied any hostling hours during the six-month period, and hostling work accounted for 2% of all the work performed by Road Drivers as a group during that time.

Road Drivers must meet the same job qualifications as City Drivers. Road Drivers are required to carry Class A Commercial Driver's Licenses (CDLs) with double/triple, hazardous materials and tank endorsements. Like City Drivers, they are required to keep DOT logs and other paperwork mandated by the Department of Transportation and to take meal breaks required by Illinois law. They must also have acceptable Motor Vehicle Reports (MVRs) and are subject to random drug testing. Like City Drivers, they are also subject to disciplinary practices that only apply to the Employer's drivers, as well as disciplinary policies generally applicable to the Employer's employees. The Employer also issues Road Drivers security keys for opening tractors in the yard. When hiring Road Drivers, the Employer seeks drivers with a minimum of one year of experience, but the Employer also promotes Dockworkers into the Road Driver position if they complete the dock-to-driver program, as discussed below.

Road Drivers are employed on a full-time basis. During the six-month period, they worked an average total of 828 hours per driver. Unlike City Drivers, Road Drivers are paid an hourly rate while performing dock, city, or hostling work, but are paid a mileage rate when performing their regular road driving duties. Their hourly rates are the same as the rates applied to City Drivers. Their mileage rate ranges between \$0.5616 and \$0.6516 per mile. Road Drivers' wages are determined according to seniority. It takes them three years to reach the top hourly and mileage rates. Road Drivers' wages average between \$60,000 and \$70,000 per year. Road Drivers do not have assigned shifts, but rather have routes which each have assigned start times in the overnight or early morning hours. There is no evidence regarding the number of hours they typically work per week.

The Employer maintains a separate seniority list for Road Drivers. Based on their seniority, Road Drivers bid on runs with varying start times and distances. Road Drivers' bids also include a dock work option which indicates whether dock work is available for a particular bid.

Dockworkers

Dockworkers transport freight across the dock area in order to load it and unload it to and from trailers. Dockworkers use forklifts during the regular course of their duties. Unlike City

⁸ The Kronos payroll figures showing the breakdown of work by Road Drivers do not account for the 30 minutes Road Drivers work each time they uncouple their trailers and put them on the dock. There is no evidence as to how frequently Road Drivers perform this task. This is considered part of a Road Driver's regular driving duties. Presumably, accounting for these hours could significantly decrease the proportion of time Road Drivers work the dock relative to their regular driving duties.

and Road Drivers, Dockworkers do not couple and uncouple tractors and trailers at the dock. According to their job description, Dockworkers verify documentation to ensure that it matches the freight description and they “assist customers with freight and freight documentation as needed.” However, there is little record evidence describing the various job duties involved in dock work outside of what is contained in the Dockworker job description. Supplemental Dockworkers’ duties are the same as full-time Dockworkers’ duties.

Dockworkers perform virtually all their duties exclusively at the Terminal.⁹ Dock work accounted for 89% of the work hours accrued by Dockworkers during the six-month period.¹⁰ Only one of the 393 Dockworkers performed any city or road driving work during the six-month period, and that individual handled just 8.02 hours of city driving.

Dockworkers hostle using specialized hostling trucks that do not require them to have a CDL.¹¹ During the six-month period, 12% of the Dockworkers accrued hours for hostling work. Hostling was the primary duty of 32 Dockworkers. Fourteen Dockworkers accounted for 70% of all the hostling work performed by Dockworkers during the six-month period. Overall, hostling duties accounted for 11% of all the work performed by Dockworkers in the six-month period.

The only substantive prerequisite for employment as a Dockworker is that the applicant must be at least 18 years of age. The Employer’s job description for the position states that a high school diploma or its equivalent is preferred. Dockworkers are not required to possess a CDL and are subject to disciplinary policies generally applicable to the Employer’s employees. Supplemental Dockworkers are not currently subjected to random drug testing. Some, but not all, Dockworkers are issued security keys they use to access any of the tractors in the yard.

The 227 part-time Supplemental Dockworkers average about 25 hours per week, and earn between \$16.66 and \$18.71 per hour. During the six-month period, they worked, on average, 389 total hours per person. Supplemental Dockworkers average between \$25,000 and \$30,000 per year. They reach the top rate of pay after one year of employment. The 146 full-time Dockworkers earn between \$20.60 and \$23.60 per hour. It takes them three years to reach the top rate of pay. During the six-month period, full-time Dockworkers worked an average of 796 hours. As a group including both full-time and Supplemental employees, individual Dockworkers averaged a total of 557 hours during the six-month period.

The Employer does not maintain a seniority list for the Supplemental Dockworkers. Those employees are generally assigned to particular shifts upon being hired, though there was no evidence as to what these shifts are. However, the Employer maintains a seniority list for the full-time Dockworkers, who may bid on different start times.

Other terms and conditions of employment

City Drivers, Road Drivers, and Dockworkers are eligible for the same health benefits and 401(k) plan. Employees in all three classifications also receive four or five days of paid

⁹ One Dockworker recorded 8 hours of dock work at another FedEx Freight facility.

¹⁰ The record shows work hours for only 353 of the 373 Dockworkers during the six-month period.

¹¹ In contrast, City and Road Drivers may use a tractor for hostling, as they have CDLs.

personal time off per year. However, only full-time employees are also eligible for paid vacation leave, ranging between two and four weeks per year, depending on seniority. Full-time employees are also entitled to seven paid holidays per year. The part-time Supplemental Dockworkers do not qualify for holiday or vacation leave. All employees share a break room and are invited to Employer-hosted functions and events. There is no evidence regarding employee interaction in either of these settings.

All City Drivers, Road Drivers, and full-time Dockworkers receive a uniform allowance. City Drivers and Road Drivers are required to wear uniforms while performing their driving duties. Dockworkers may order uniforms, but are not required to wear them. Drivers are also not required to wear a uniform while performing dock work or hostling.

B. Supervision

The 50 Operational Supervisors directly oversee the Employer's employees. Although Operational Supervisors can discipline employees in any job classification, the Operational Supervisors are regularly assigned to supervise either the dock or dispatch. Operational Supervisors assigned to the dispatch office supervise City and Road Drivers. Operational Supervisors supervising the dock generally roam the dock and work out of a separate area on the dock. While working the dock, Road and City Drivers are supervised by Operational Supervisors on the dock. The record does not reflect whether or how often these supervisory assignments change. The Operational Supervisors are empowered to discipline and have disciplined both drivers and Dockworkers in the course of their duties. There is no evidence as to how many supervisors are present during each of the various shifts.

Operational Supervisors assigned to supervise one function sometimes cover supervision of the other function, as when Operational Supervisors cover an area outside their regular assignment because of absences on a particular day, or in order to "cross-train." The record does not show how often this occurs.

C. Contact and Interchange

Dockworkers and drivers are in close contact whenever drivers perform dock work. Drivers are not necessarily assigned to load their own trailers while performing dock work and may be assigned to work alongside Dockworkers to perform the same tasks. City and Road Drivers performed 3% of all the dock work during the six-month period. There is no significant evidence of contact between drivers and Dockworkers beyond this.

The Employer operates a dock-to-driver bridge program intended to allow Dockworkers to obtain a CDL and transfer to a driver position. Once a Dockworker is accepted into the program, he or she has one year to complete it. Dockworkers complete the program upon obtaining their CDL. During their enrollment in the program, Dockworkers work on the dock on a full-time basis, and take a five-week skills training course. Once Dockworkers graduate from this program, they are offered a full-time driving position if one is available. Currently, there are six Dockworkers participating in this program. Forty-five drivers are graduates of the dock-to-driver program.

There is no evidence that any drivers have ever transferred to a Dockworker position. There is also no evidence regarding contacts between the Road and City Drivers.

D. Functional Integration

Employees in all job classifications work toward the ultimate goal of picking up and delivering freight to and from customers.

E. History of Collective Bargaining

There is no history of collective bargaining at the facility.

IV. ANALYSIS

If the petitioned-for unit consists of a readily identifiable group of employees who share a community of interest, then it will be found appropriate unless there are additional employees with whom these employees share an overwhelming community of interest. *Specialty Healthcare and Rehabilitation Center of Mobile*, supra, slip op. at 10-13. Therefore, the first two threshold questions are whether the Petitioner's proposed bargaining unit of City Drivers and Road Drivers constitutes a readily identifiable group of employees, and whether they share a community of interest.

I find that these questions should be answered affirmatively. The petitioned-for unit is structured along the lines of classification, job function, and skills. The petitioned-for unit is a clearly identifiable group because, among other things, it "tracks a dividing line drawn by the Employer." *Macy's*, supra, slip op. at 9. Although the Employer insists that the Dockworkers and drivers are not part of separate departments, there is no question that the Employer treats the driver classifications differently in almost every operational and administrative sense.

The Employer tracks drivers' work separately from that of the Dockworkers. It also keeps separate seniority lists for each of the driver positions and for the full-time Dockworkers. Road and City Drivers are mostly supervised separately from Dockworkers by those Operational Supervisors assigned to dispatch. The drivers wear uniforms that distinguish them from Dockworkers, who are allowed to perform their job duties in street clothes. As Class A CDL holders, City and Road Drivers are uniquely qualified employees dedicated to the operation of particular equipment. They are engaged in the same unique function, as the only employees who drive freight from place to place. Thus, the City Drivers and Road Drivers are readily identifiable as a group. *Northrop Grumman Shipbuilding*, supra, slip op. at 3.

For similar reasons, I also find that these employees share a community of interest. They are engaged in virtually the same task – moving freight from place to place. Road and City Drivers are jointly supervised. Road and City Drivers are distinctly qualified and skilled because of their licensure requirements, and use the same type of equipment. As full-time employees, drivers share the same benefits and their total compensation is similar. Their working conditions are quite similar as well: the drivers are subject to random drug testing and special disciplinary policies, perform the bulk of their work away from the Terminal in the vast majority of cases,

have meal periods, and are able to bid on runs according to seniority. Thus the City Drivers and Road Drivers share a distinct community of interest. *Home Depot USA*, supra at 1290 (CDL license, driving record prerequisite, and drug testing requirements are among factors supporting finding community of interest in driver unit).

Therefore, the burden is on the Employer to show that the Road Drivers and City Drivers share an overwhelming community of interest with the Dockworkers. As the Board has explained, “additional employees share an overwhelming community of interest with the petitioned-for employees only when there ‘is no legitimate basis on which to exclude [the] employees from’ the larger unit because the traditional community-of-interest factors ‘overlap almost completely.’” *Northrop Grumman Shipbuilding*, 357 NLRB supra, slip op. at 3, quoting *Specialty Healthcare*, supra, slip op. at 11, and *Blue Man Vegas, LLC v. NLRB*, 529 F. 3d 417, 421, 422 (D.C. Cir. 2008). The Employer has failed to meet this burden.

The employees in the petitioned-for unit and the Dockworkers possess very different skills and perform distinct job functions. Unlike Dockworkers, Road and City Drivers must possess acceptable driving records and Class A CDLs with various certifications. Dockworkers are low-skilled employees who do not require any specialized skills beyond the use of a forklift. The nature of the work the vast majority of drivers principally perform also means that they spend the bulk of their time away from the Terminal performing their job duties, while Dockworkers work virtually exclusively within the Terminal. To the extent a small number of City Drivers spend the bulk of their time hostling at the Terminal, these individuals are still engaged primarily in driving as opposed to the loading and unloading work done by Dockworkers.

One of the most significant differences between the employees in the petitioned-for unit and the Dockworkers is the disparity in hours, wages, and benefits. All of the Road and City Drivers are full-time employees earning between \$50,000 and \$70,000 per year. As full-time employees, they are also entitled to paid holidays and paid vacations. In contrast, 64% of the Dockworkers are part-time employees earning between \$25,000 and \$30,000 per year, but they are ineligible for paid holidays or vacations. The remaining full-time Dockworkers have a slightly lower starting rate than City Drivers. During the six-month period, the average Dockworker accrued 43% fewer work hours than the average driver.

The Employer primarily points to employee interchange and the functional integration of its operations as evidence that the drivers and Dockworkers share an overwhelming community of interest. However, the record evidence of interchange is insufficient to demonstrate an overwhelming community of interest. Road and City Drivers generally only perform dock work voluntarily, and though the Employer can compel drivers to work the dock, it usually acquiesces in the drivers’ preferences by staffing part-time Dockworkers to perform that work unless drivers have volunteered to do it. Although 38% of the drivers performed at least some dock work during the representative six-month period, overall, drivers spent only 2% of their working time performing dock work. The performance of dock work was largely concentrated among a few employees in the petitioned-for unit. Ten out of the 229 employees in the petitioned-for unit accounted for 43% of the dock work performed by drivers during the six-month period, and the top five drivers performed 26% of all the dock work performed by drivers. Overall, the

employees in the petitioned-for unit performed 3% of all the dock work during the six-month period.

Moreover, there is no evidence that any Dockworkers have ever performed the duties of a driver. Evidence of one-way interchange involving only a limited portion of the drivers' working time is not persuasive evidence that the Dockworkers share a community of interest with the drivers. *DTG Operations, Inc.*, 357 No. 175, slip op. at 7 (2011) (limited, one-way interchange involving a minority of the unit does not require a classification to be added to a petitioned-for unit). The Employer also argues that there is significant interchange based on the 45 permanent transfers into the driver classifications by former Dockworkers. However, "evidence of permanent interchange is a less significant indicator of whether a community of interest exists than is evidence of temporary interchange." *Macy's*, supra, slip op. at 10, citing *Bashas', Inc.*, 337 NLRB 710, 711 fn. 7 (2002). In addition, even the permanent interchange in this case is one-way, as there is no evidence that Road or City Drivers have transferred to the Dockworker classification.

The Employer cites *Levitz Furniture Company of Santa Clara*, 192 NLRB 61 (1971), in support of its argument that the Dockworkers must be included in a unit with the drivers. As noted by the Board in *DTG Operations, Inc.*, supra, slip op. at 6, fn. 23, the *Levitz* case does not consider "whether the disputed employees share an *overwhelming* community of interest with the unit employees." (emphasis in original) However, even assuming that *Levitz* survives *Specialty Healthcare*, it is readily distinguishable here, as it was in *Macy's*, supra, slip op. at 17-18. The Board in *Levitz* relied heavily on its finding that the truck drivers in that case shared many community-of-interest factors and had "such regular and frequent interchange" with other employees in the facility that they did not constitute a "clearly identifiable group." *Id.* at 63. Here, the vast majority of the drivers in the petitioned-for unit have neither regular nor frequent interchange with the Dockworkers, and as I have found, they constitute a readily identifiable group, subject to distinct qualifications and licensure. *Home Depot USA*, supra at 1291 (driver-only unit appropriate despite spending 30-40% of working time on non-driving tasks).

Similarly, the Employer cites *E. H. Koester Bakery Co., Inc.*, 136 NLRB 1006, 1012 (1962), wherein the Board considered many of the traditional community-of-interest factors to find that the drivers at issue could be excluded from a petitioned-for production and maintenance unit because, among other things, drivers spent the vast majority of their time away from the facility, had distinct working conditions, and had little contact with the petitioned-for employees. Here, the Petitioner seeks to represent a unit of drivers only, an important consideration absent from other decisions cited by the Employer in support of its argument. See *International Bedding Co.*, supra (petitioner sought to include drivers in unit of production, warehouse, and yard jockeys); *Calco Plating, Inc.*, 242 NLRB 1364 (1979) (petitioner sought unit of production and maintenance employees excluding drivers); *Transway, Inc.*, 153 NLRB 885 (1965) (petitioner sought a unit of what it characterized as warehousemen excluding drivers). Also, the drivers here are not integrated with the Dockworkers. On the contrary, drivers maintain their separate identity, in part, because they spent 86% of their time performing drayage, city and road work.

Although there are a few areas of commonality between the three classifications, chiefly in the similarity of benefits among full-time employees and the functional integration of the

Employer's operations, these factors fall short of establishing the overwhelming community of interest between the Dockworkers and the employees in the petitioned-for unit that would be necessary to require the Dockworkers' inclusion. See, *Rinker Materials*, 294 NLRB 738, 739 fn. 5 (1989)(finding unit of only drivers appropriate despite common supervision with other employees because the two groups performed significantly different functions and possessed different skills).

There is an overwhelming community of interest only where there is no legitimate basis upon which to exclude a classification from the unit because the traditional community-of-interest factors overlap almost completely. *Northrop Grumman Shipbuilding*, supra, slip op. at 3. The Board will find a fractured unit where the petitioned-for unit does not "track any lines, drawn by the employer, such as classification, departmental, or functional lines, and also was not drawn according to any other community of interest factor." *Macy's*, supra, slip op. at 11, citing *Odwalla, Inc.*, supra, slip op. at 4-6. Here, that is not the case because: (1) Dockworkers and the petitioned-for drivers have distinct classifications, job functions, and skill sets; (2) the groups are for the most part separately supervised; (3) there is only limited, one-way interchange between the Dockworkers and the employees in the petitioned-for unit; and (4) the groups have strikingly dissimilar wages, hours and benefits. The "mere fact" that the driver classifications may also share a community of interest with the Dockworkers is insufficient to render the smaller petitioned-for unit inappropriate. *Specialty Healthcare*, supra, slip op. at 10. See also *Odwalla, Inc.*, supra at 5-6 (sales and delivery drivers would constitute an appropriate unit standing alone, but because unit included additional employees, unit was fractured).

Therefore, I find that the Road Drivers and City Drivers constitute a readily identifiable group of employees who share a community of interest, and the Dockworkers do not share an overwhelming community of interest with the petitioned-for unit. Accordingly, I find that the petitioned-for unit is appropriate for the purposes of collective bargaining. *Specialty Healthcare*, supra; *Overnite Transportation Co.*, 325 NLRB 612 (1998).

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization which claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Road Drivers and City Drivers employed by the Employer at its 470 E. Joe Orr Road, Chicago Heights, Illinois terminal; **excluding** all other employees, Dockworkers, Driver Apprentices, Supplemental Dockworkers, Shop Technicians, maintenance and custodial employees, office clerical employees, and guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **International Brotherhood of Teamsters, Local 710**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior*

Underwear, Inc., 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Regional Office, The Rookery Building, 209 South LaSalle Street, Suite 900, Chicago, IL 60604-5208 on or before **Friday, April 17, 2015**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by mail, facsimile transmission at (312) 886-1341, or by electronic filing through the Agency's website at www.nlrb.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of three (3) copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to 12:01 a.m. on the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by the close of business on **Friday, April 24, 2015**,

at 5:00 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.¹² A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated: April 10, 2015

/s/ Daniel E. Halevy

DANIEL E. HALEVY

Acting Regional Director, Region Four
National Labor Relations Board

¹² A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.